

CITY OF NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 100 Civic Center Drive
Thursday, October 17, 2013
REGULAR MEETING
6:30 p.m.

I. CALL TO ORDER - The meeting was called to order at 6:30 p.m.

II. PLEDGE OF ALLEGIANCE – Vice Chair Tucker

III. ROLL CALL

PRESENT: Ameri (arrived at 6:32 p.m.), Brown, Hillgren, Lawler, Myers, and Tucker

ABSENT:

EXCUSED: Kramer

Staff Present: Kimberly Brandt, Community Development Director; Leonie Mulvihill, Assistant City Attorney; Jim Campbell, Principal Planner; and Marlene Burns, Administrative Assistant

IV. PUBLIC COMMENTS

Chair Hillgren invited those interested in addressing the Planning Commission on non-agenda items to do so at this time. There was no response and Chair Hillgren closed public comments.

V. REQUEST FOR CONTINUANCES - None

VI. CONSENT ITEMS

ITEM NO. 1 MINUTES OF OCTOBER 3, 2013

Recommended Action: Approve and file

Chair Hillgren opened public comments. Seeing none, Chair Hillgren closed public comments.

Commissioner Ameri arrived at this juncture (6:32 p.m.).

Motion made by Commissioner Lawler and seconded by Commissioner Brown, carried (5 – 1) with Secretary Kramer absent to approve the minutes of October 3, 2013, as presented.

AYES: Ameri, Brown, Hillgren, Lawler, and Myers

NOES: None

ABSTENTIONS: Tucker

ABSENT: Kramer

VII. STUDY SESSION

ITEM NO. 2 WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE UPDATE (PA2012-057)
Site Location: City-wide

Principal Planner Jim Campbell provided background noting that the item was discussed at length at a previous meeting and that the Commission gave clear direction at that time. He addressed the potential allowance of wireless facilities and antennas in residential areas noting that presently they are not allowed in Single-Family and Two-Family neighborhoods, although they are allowed in the public right-of-way in low density neighborhoods. He added that some cities allow them, subject to a Conditional Use Permit, in residential zones. He noted that staff recommendations are to continue to prohibit them in the R1 and R2 zones.

In response to Chair Hillgren's inquiry Principal Planner Campbell added that staff feels that good coverage is provided for by allowing facilities in public rights-of-way and in surrounding areas so that they are not needed in private residential lots.

In reply to Commissioner Ameri's question regarding the City of Irvine, Principal Planner Campbell reported that telecom facilities are allowed in residential areas in Irvine by way of conditional use permits but that they have large setbacks so they are not typically found on single-family properties.

Commissioner Ameri commented on the need to be consistent with other cities throughout the County.

In response to Commissioner Brown's question regarding whether the owner of a property would be compensated for allowing wireless facilities on their property, Principal Planner Campbell reported that they would typically be compensated.

Vice Chair Tucker commented on the need for clarifying existing language and wondered if wireless facilities are prohibited on lettered lots. Principal Planner Campbell reported that they are currently allowed on lettered lots or common area lots.

Commissioner Ameri indicated that it would be up to the land owner to choose and stated he would rather leave it to the homeowner associations, homeowners, and residents of the community to decide whether they want a wireless facility or not, as long as the City maintains control over approval.

Chair Hillgren invited public comments on the issue of potentially allowing facilities on R-1 and R-2 lots.

Paul O'Boyle, Attorney representing Crown Castle, commented on a tiered process with small-cell facilities exceptions which are prominent throughout the State. From an industry standpoint, if antennas are not allowed in residential zones, they need to be covered by macro cell sites outside the zones. He noted that it does not pertain to just private property, but also the public right-of-way. He reported that his client works exclusive in the public right-of-way and as the ordinance stands presently, installations are allowed only in existing facilities. He listed nearby cities that allow wireless facilities in residential zones, by right and addressed the process used in the City of Costa Mesa.

Vice Chair Tucker stated that what is being suggested is not installing facilities on private homes.

Mr. O'Boyle stated that presently, wireless facilities on the public right-of-way are allowable under a CUP and that his client is requesting that it be allowed through an encroachment permit.

Assistant City Attorney Leonie Mulvihill clarified that the Commission is considering whether to allow or prohibit facilities on residential lots.

Mr. O'Boyle reported that telecommunications is a utility the same as electricity or water and that is the purpose of the public right-of-way.

Vice Chair Tucker stressed that what is presently being considered is allowing facilities on residential lots, not to be confused with the public right-of-way. He added that it may not be a good idea and that the Commission is not prohibiting them from being on the public right-of-way and is discussing directing staff to look at other refinements relative to allowing them on lettered lots.

Mr. O'Boyle stated that he is concerned about the public right-of-way and the way it is designed. He explained the tiered system and distinctions between macro systems and small-cell systems.

Dean Brown, representing the California Wireless Association, noted that there are special circumstances where wireless facilities have been located on R1 and R2 zones. He added that staff has built in flexibility by allowing them in homeowner association lettered lots but there have been challenges because of their by-laws. He added that the future involved small-cell sites which can be inconspicuous and that there is a lot of demand for installing them in residential areas.

Jim Mosher stated that the purpose of the matter is to correct existing deficiencies in the wireless code and stated that placing them in the public right-of-way may not be the best solution. He commented on his residential area and felt that homeowners would probably prefer to have a wireless facility installed in the nearby private park area (commonly-owned lot) but would probably not be allowed since the lot is zoned as R1.

Chair Hillgren closed public comments.

Vice Chair Tucker commented on the possibility of modifying the language for increased flexibility and make it inclusive enough where the facilities may be placed where coverage will be balanced.

Chair Hillgren noted that the goal is to provide coverage in an area that is lacking and where there are gaps in coverage. He added that conditions could allow a variance or permit opportunity to install them in those areas.

Principal Planner Campbell addressed collocation of cell sites including the current ordinance requirements. He added that as antennas get smaller, requiring collocation may not be practical. He reported that staff is recommending the possibility of eliminating that requirement and noted that Federal and State law encourage collocation and that is sufficient for the City's purposes.

Vice Chair Tucker stated that he accepts eliminating the collocation requirement.

Chair Hillgren invited public comments on the issue of collocation.

Dean Brown stated that the California Wireless Association supports staff's recommendation.

Chair Hillgren closed public comments.

Principal Planner Campbell addressed public view protection including prior direction from the Commission that if there is an important public view not identified by the General Plan, it should be afforded some level of protection through evaluation of the site. He stated that staff recommends broadening existing draft language to reflect the same and include other public views.

Vice Chair Tucker noted that there is a list of public view locations in the General Plan and stated there may be other views in the future. Direction was to include additional locations as identified in the future by the General Plan and Vice Chair Tucker suggested evaluating public views during the application process. As projects come in, there needs to be flexibility to evaluate public views that may not have been previously considered.

Principal Planner Campbell stated the intent to modify the language such as if there is a public view identified in the review process; it could be afforded the same level of protection as those views listed in the General Plan.

It was noted that if it is a General Plan view, whether now or in the future, it will be covered. The subject modification would relate to views not listed in the General Plan but identified in relation to specific applications.

Assistant City Attorney Mulvihill indicated that she will work with staff to develop appropriate language for the ordinance.

Chair Hillgren opened public comments related to public view protection.

Dean Brown asked if there will be a map identifying additional public views other than those identified by the General Plan.

Assistant City Attorney Mulvihill reiterated that she will work with staff to provide appropriate language reflecting the Commission's direction.

Paul O'Boyle recommended using the views identified in the General Plan and suggested adding a safety valve for other views as recommended by staff for specific plans and considered by the Commission.

Vice Chair Tucker noted that the views being considered are public views.

Jim Mosher expressed concerns that the current code has strong protections against the impact of facilities on public as well as private views. He referenced his written comments relative to the process for problematic applications and protecting private interests. He added that staff is supposed to receive visual simulations of projects and that the Commission is supposed to consider the views from both public areas and private residences. He felt that the Commission should be able to deny a project based on obstruction of both public and private views.

Chair Hillgren closed public comments.

Discussion followed regarding protecting public views and whether or not to protect private views.

Assistant City Attorney Mulvihill commented on a telecommunications facility project processed under the current ordinance and reported that Council considered whether or not to protect private views. She added that as the ordinance is being modified, it will be up to the Commission and Council whether or not to do so. She reported that staff is recommending not to protect private views in the future but rather to protect public views and expand on the latter. She stated that the City's tree maintenance policies consider private views but stated that it is difficult to enforce a code that would give each homeowner the ability to protect private views.

Commissioner Brown noted concerns with setting precedence with protecting private views.

Commissioner Ameri agreed that adding restrictive regulation regarding private views may not be the right thing to do, the public views need to be protected but that there should be a provision indicating that staff will consider private views during the application process.

Vice Chair Tucker commented on challenges with protecting private views.

Commissioner Ameri clarified his intent not to make it a part of the requirements but rather give consideration on a case-by-case basis.

Commissioner Myers stated that he believes that some kind of tiered application process to facilitate smaller antennas makes sense and that keeping them off of residences is important.

In response to Chair Hillgren's inquiry, Mr. Campbell reported that staff considers alternative placement through review of visual simulations.

In relation to height, Principal Planner Campbell addressed current height limits and recommended maintaining the existing height standards in the current code and that requests for increasing height would need to be through a Conditional Use Permit or a variance process for extraordinary needs.

Vice Chair Tucker stated that the findings will need to be considered, especially as they relate to CUPs and variances.

Commissioner Myers indicated support for staff's recommendations.

Chair Hillgren invited public comments regarding the height of facilities.

There were no comments from the public and Chair Hillgren closed public comments.

Mr. Campbell commented on the average telecom facility coverage and suggested the Community may desire "above average coverage". He recommended removing that language and Members of the Commission concurred.

In regard to the emergency communications review, Principal Planner Campbell reported that staff has contacted the Fire and Police Departments and they want to continue performing emergency communications reviews. Therefore, staff is recommending no changes to the standard.

Chair Hillgren invited public comments regarding emergency communications interference review.

Dean Brown provided a brief history and noted that modern technology is not in conflict with emergency communications and that the wireless industry does not think it necessary. He added that it is burdensome to perform and that wireless facilities provide emergencies with its frequency so that interference will not occur.

Director of Community Development Kimberly Brandt noted that the review does not add to the timeframe required for staff to complete its review. She did not feel it is a burdensome requirement as it only entails ensuring that frequencies are acceptable.

Dean Brown commented on the need to contact the Fire and Police Departments specifically.

Chair Hillgren closed public comments.

Principal Planner Campbell addressed modification of existing facilities noting that the proposed ordinance would establish a five (5%) percent threshold of change through an administrative zoning clearance process and stated that the industry is looking for a larger percentage for thresholds. He also reported that the Federal government has not established the definition for substantial alteration. He reiterated that staff is recommending a five (5%) percent threshold of alteration above which, discretionary permits would be required.

In response to Chair Hillgren's inquiry, Mr. Campbell stated that it would be five (5%) percent of any dimension.

Assistant City Attorney Mulvihill reported that it would be subject to change to comply with standards set by the Federal government, in the future.

It was suggested to add the word, "dimension" to clarify the five (5%) percent threshold and that the reference needs to be well-defined.

Mr. Campbell stated that Federal law requires minor modifications to be approved administratively by the City.

Assistant City Attorney Mulvihill added that the issue is subject to debate and that staff is carefully watching the Federal rule-making process.

Chair Hillgren invited public comments on the modification of existing facilities.

Jim Mosher stated that if companies have by right, the right to increase thresholds, it should be kept as low as possible.

Mr. O'Boyle stated that it is ten (10%) percent of the FCC's national guideline and that no matter what it is, if it exceeds an existing standard, it would need to go through the CUP process.

Assistant City Attorney Mulvihill stated that staff would like to do that since it would add another review to the process.

Chair Hillgren closed public comments.

Mr. Campbell reported that current regulations require operators prepare a radio frequency (RF) compliance report within a particular timeframe and that while the industry feels it is unnecessary, staff feels that it is important to document. He noted staff recommends keeping the existing standard.

Chair Hillgren invited public comments on the RF compliance report issue.

Mr. Brown stated that it is the FCC's responsibility to enforce radio frequency emissions. He added that as more cell sites are built, actual power levels have been reduced significantly. He reported that if any wireless provider broadcasts outside of the frequency, they can lose their license for the entire region as well as if they exceed FCC requirements. He felt this is another unnecessary step. He added they submit a standard report to the FCC only if it does not meet requirements for exclusion and that typically, staff is not qualified to review them, but must hire a consultant to do so.

Mr. O'Boyle stated that most small-cell facilities would operate at a fraction of what is required, that there are general standard reports that are produced and that site-specific reports are costly and are not necessary.

Paul Ridgely suggested that it would be prudent to ask for the specific documentation that has been suggested and noted the importance of municipalities ensuring compliance.

Jim Mosher agreed with industry experts that it would not be a useful exercise but stated it is a policy decision for consideration by Council since many residents express concerns regarding radio frequency emissions. Additionally, Mr. Mosher opined that the current ordinance is defective in terms of noticing requirements when applications are being made. He felt that the new one is better and indicated that the process would work better if the public is informed when an application is first being processed. He commented on previous cases where information provided at the beginning would have saved time in processing the application.

Dean Brown commented on the overall purpose statement of the ordinance and suggested acknowledgement should be given to the critical role wireless technology plays in the City.

Chair Hill closed public comments.

Vice Chair Tucker commented on the rationale for providing the RF reports.

Assistant City Attorney Mulvihill stated that because the City is precluded from evaluating or judging the appropriateness of facilities based on RF emissions, she noted that is what members of the public are concerned about so by requiring that facilities be in compliance with FCC guidelines, the City would have a responsibility to report to the public that everything possible has been done. She added that the City should know whether facilities are in compliance with FCC guidelines.

Director of Community Development Brandt reported that it is not uncommon through the building permit process to require documentation proving compliance. It is an ongoing requirement and is required thirty (30) days after installation of the telecommunications facility.

Chair Hillgren hoped that there would be a way to limit the amount of tests required.

Mr. Campbell reported that he will incorporate the comments made at this time and will develop a revised draft to present to the Commission, in its entirety at the November 21, 2013, meeting.

Vice Chair Tucker stated that it would be helpful to distribute the draft ordinance as soon as it is completed and review the same with industry experts before the meeting. Any Federal regulations made would need to be complied with.

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 3 MOTION FOR RECONSIDERATION - None

ITEM NO. 4 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Committee Updates:

1. Land Use Element Amendment Advisory Committee

Director of Community Development Brandt reported that the Land Use Element Amendment Advisory Committee met on October 1, 2013, and concluded discussions and recommendations with the proposed changes to the Land Use Element map. Information on the proposals is available on the City's website and the next meeting will be on November 5, 2013.

2. General Plan/Local Coastal Program Implementation Committee

Director of Community Development Brandt reported that the General Plan/Local Coastal Program Implementation Committee met on September 25, 2013, and discussed potential amendments to the Coastal Zone boundaries as well as other policies. She reported an upcoming meeting on October 23, 2013, where it is anticipated that the California Coastal Commission Deputy Director will attend.

ITEM NO. 5 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT - None

ITEM NO. 6 REQUESTS FOR EXCUSED ABSENCES

Commissioners Brown and Myers requested excused absences for the Planning Commission meeting of November 7, 2013.

IX. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 8:02 p.m.

The agenda for the Regular Meeting was posted on October 11, 2013, at 3:40 p.m., in the binder and on the City Hall Electronic Bulletin Board located in the entrance of the Council Chambers at 100 Civic Center Drive.

Bradley Hillgren, Chair

Kory Kramer, Secretary

Changes proposed by Commissioner Myers to paragraph 11, page four of the 10/17/13 Draft Minutes

Commissioner Myers stated that he believes that some kind of tiered application process to facilitate smaller antennas makes sense and that keeping them off of [single-family](#) residences, [as recommended by staff](#), is important.